

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1608 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMPAL SUKHDEV VERMA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR PATEL, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/11/1999

ORAL JUDGEMENT

#. The petitioner has approached this Court with this petition under Article 226 of the Constitution, seeking indulgence of this Court against an order of detention passed by the Commissioner of Police, Ahmedabad City, on 6th February, 1999, in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

#. The subjective satisfaction has been recorded by the detaining authority that the petitioner is a bootlegger and is involved in a prohibition case registered on 21st August, 1998. He is also involved in such activities for which no offences are registered as people are afraid of him. It is recorded by the detaining authority that he is in custody and he may be released on bail when produced before Magistrate and again may engage himself in illegal activities and, therefore, in order to prevent him from doing such activities, detention is the last resort and he is, therefore, ordered to be detained.

#. The petitioner has approached this Court by raising the following contentions to assail the impugned order :-

- (1) That the detention order is in violation of the constitutional guarantees enshrined under Articles 21 and 22 of the Constitution;
- (2) That the subjective satisfaction recorded by the detaining authority is not well founded. The detaining authority has mechanically and without application of mind accepted the proposal made by the sponsoring authority;
- (3) That the subjective satisfaction in respect of exercise of powers under Section 9(2) of the PASA Act is not well founded;
- (4) That the subjective satisfaction about disturbance of public order is also not well founded;
- (5) That the detaining authority has not taken into consideration report of the Forensic Science Laboratory while passing the impugned order; and
- (6) That the detaining authority has also not considered the aspect of less drastic remedy and, therefore, the petition may be allowed.

#. Mr. Prajapati submitted that apart from the grounds taken by the petitioner in the petition, there is one more ground available to him, namely, that the order of detention co-detenu, Munirkhan Abbaskhan Patan, has been quashed and set aside by order of this Court passed in Special Civil Application No.8788 of 1998 on 8th July, 1999. He has also placed on record a copy of the said order. He submitted that a third co-detenu by name

Ismail Nazir Ahmed Shaikh was also detained and by order dated 19th February, 1999. He has also been released from detention by virtue of an order passed by this Court in Special Civil Application No.1319 of 1999 on 24th April, 1999 and, therefore, the present petition may be allowed.

#. Mr. Patel, learned Assistant Government Pleader does not dispute this factual aspect of release of co-detenus by virtue of order of this Court quashing and setting aside the order of detention on the ground that the subjective satisfaction about the disturbance in public order was not well founded and stood vitiated. In this view of the matter, this petition also deserves to be allowed.

#. In the result, this petition is allowed. The impugned order of detention dated 6th February, 1999, passed by Commissioner of Police, Ahmedabad, in respect of the petitioner-Ram Pal Sukhdev Sharma is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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